

Attorneys for Plaintiff, United States

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (hereinafter "EPA"), files this first amended complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action commenced pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607(a), for the recovery of response costs from E.I. du Pont de Nemours and Company ("Du Pont"), and EPEC Polymers, Inc. ("EPEC"), General Electric Company ("GE"), Olin Corporation ("Olin"), and Rockwell Automation ("Rockwell") incurred by EPA in responding to releases and threatened releases of hazardous substances at and from the Ordnance Works Disposal Areas Site (the "MOW Site" or the "Site") in Morgantown, West Virginia.

2. The United States also seeks a declaration of the Defendants' liability for all unreimbursed future response costs to be incurred by the United States in connection with the MOW Site.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action and the parties hereto, pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331 and 1345.

4. Venue is proper in this District pursuant to Section 113(b) and (c), because the releases and threatened releases of hazardous substances that give rise to the United States' claims have occurred in this District.

THE MOW SITE

5. The MOW Site consists of approximately 848 acres located on the Monongahela River approximately one mile south of the City of Morgantown, West Virginia. Morgantown

operates a drinking water intake facility approximately one mile downstream from the Site.

Various chemical manufacturing operations have been conducted at the Site, from the early 1940s to the present.

6. EPA has divided the Site into two operable units (OU1 and OU2). OU1 covers an area roughly 8 acres in size which was the principal disposal area for the manufacturing operations conducted at the Site. OU2, covering an area roughly 840 acres in size, encompasses a smaller area where the various manufacturing operations were located, and the rest of the property owned by the manufacturing operations during their periods of operation.

THE DEFENDANTS

7. Upon information and belief, Du Pont is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Wilmington, Delaware.

8. Upon information and belief, EPEC Polymers is a corporation organized and existing under the laws of the States of Delaware, with its principal place of business in Houston, Texas. EPEC Polymers is the successor in interest to Heyden Chemicals Corporation ("Heyden").

9. Upon information and belief, GE is a corporation organized and existing under the laws of the State of New York, with its principal place of business in Fairfield, Connecticut. GE is the successor in interest to Borg-Warner Corporation and Borg-Warner Specialty Chemicals, Inc.

10. Upon information and belief, Olin is a corporation organized and existing under the laws of the Commonwealth of Virginia, with its principal place of business in Norwalk,

Connecticut. Olin is the successor in interest to the Mathieson Chemical Company which merged with Olin Industries, Inc. to form Olin-Mathieson Corporation, which later changed its name to Olin Corp.

11. Upon information and belief, Rockwell Automation is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Milwaukee, Wisconsin. Rockwell Automation (formerly Rockwell International Corporation) is the successor in interest to Rockwell Manufacturing Company and Sterling Faucet Company.

GENERAL ALLEGATIONS

12. The real property on which the MOW Site is located was originally assembled and purchased by Du Pont in 1940. A manufacturing facility was then constructed and operated by Du Pont under a Cost-Plus-A-Fixed Fee ("CPFF") contract with the United States covering the production of, among other chemicals, anhydrous ammonia, methanol, formaldehyde, hexamine, ethylene diamine, light oils and tars during World War II.

13. From November 4, 1941 to December 22, 1943, Du Pont owned the Site, and operated a chemical manufacturing facility thereon, under contract with the United States.

14. Du Pont transferred ownership of the Site to the United States on or around December 22, 1943.

15. From the time of that transfer in December 1943 until August 15, 1945, Du Pont continued to operate a manufacturing facility on the Site under the CPFF contract.

16. With the end of World War II in August 1945, manufacturing operations at the Site were discontinued.

17. In or about July 1946, Heyden entered into a contract with the United States

under which it agreed to produce anhydrous ammonia at the Site. Heyden produced anhydrous ammonia at the Site from approximately October 1946 through May 1950.

18. In 1951, Mathieson began leasing manufacturing facilities within the Site from the United States. Between 1951 and 1958, Mathieson operations at the MOW Site included the manufacture of, among other things, coke, ammonia, methanol, formaldehyde, hexamine, ethylene diamine, and coke oven by-products, such as benzol, ammonium sulfate, and light tars and oils.

19. From 1958 through 1962, the manufacturing facilities at the MOW Site were idle.

20. On August 20, 1962, the United States sold the MOW Site to Morgantown Community Association, Inc., which immediately transferred ownership to Morgantown Ordnance Works, Inc. ("MOW1").

21. In 1964, Weston Chemical Company ("Weston") purchased a small parcel of property from MOW1, and thereafter operated chemical manufacturing plants and laboratories on that property. In or around 1969, Borg-Warner Corporation purchased Weston and began operating the former Weston manufacturing plants and laboratories on the Site. Borg-Warner and/or Weston's chemical manufacturing operations at the Site involved the use of, among other substances, phenol, acetone, and toluene.

22. In or around 1970, Rockwell Manufacturing Company and/or Sterling Faucet Company constructed two waste lagoons at the MOW Site. Between approximately 1970 and 1977, Rockwell Manufacturing and Sterling Faucet Company transported and deposited liquid plating wastes into the lagoons.

23. On November 30, 1978, Princess Coals, Inc. acquired the MOW Site from

MOW1. On December 15, 1982, Princess Coals, Inc. sold the MOW Site to Morgantown Industrial Park, Inc. ("MIPI"). Morgantown Industrial Park Associates Limited Partnership ("MIPA") acquired the MOW Site from MIPI on December 21, 1983.

24. On October 15, 1984, EPA proposed to include OU1 of the MOW Site on the Superfund National Priorities List ("NPL"), and finalized the Site on the NPL on June 10, 1986.

25. In March 1985, EPA began a Remedial Investigation Feasibility Study ("RI/FS") at the MOW Site which focused primarily on OU1. The resulting January 1988 RI/FS report documented the presence of hazardous substances at OU1 and at numerous areas of the complex of process buildings located within OU2.

26. In March 1988, EPA issued a Record of Decision ("ROD") selecting a remedial action for implementation at OU1. In September 1989, EPA issued a new ROD which superceded the March 1988 ROD. In June 1990, EPA issued an order directing several parties (Rockwell, Olin, GE and MIPA) to implement the remedial action selected in the September 1989 ROD ("OU1 Order"). In September 1999, EPA issued a new ROD which superceded the September 1989 ROD. EPA subsequently modified the OU1 Order to require implementation of the September 1999 ROD.

27. In June 1990, EPA entered into a consent order under which DuPont, EPEC, GE, Olin, and Rockwell were required to conduct a Remedial Investigation and Feasibility Study ("RI/FS") at OU2 of the MOW Site. The RI Report, issued in November 1995, identified a number of areas within OU2 where hazardous substances were located. In September 1996, several parties (DuPont, Olin and Tenneco Polymers, Inc. [n/k/a EPEC Polymers]) signed another consent order under which such parties committed to clean up the hazardous substances

documented in the RI. This work was completed in 1997.

28. In the summer of 2003 Olin Corporation, Rockwell International, EPEC and GE completed the construction phase of the OU1 remedial action at the MOW Site, with EPA oversight. The remedial action involved, among other things, off-site treatment of contaminated soils and sediments, consolidation of contaminated media into an existing landfill, capping of the landfill, long-term monitoring of the landfill and institutional controls.

29. To date, EPA has incurred approximately \$3.6 million in response costs at the MOW Site for which it seeks reimbursement.

CLAIM FOR RELIEF

30. The allegations contained in paragraphs 1- 29 are realleged and incorporated herein by reference.

31. Section 107(a) of CERCLA, 42 U.S.C. §9607(a) provides, in pertinent part:

Notwithstanding any other provisions or rule of law, and subject only to the defenses set forth in subsection (b) of this section-

- (1) The owner and operator of a . . . facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility . . . owned or operated by another party or entity and containing such hazardous substances,
- (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for -

(A) all costs of removal or remedial action incurred by the United States Government... not inconsistent with the national contingency plan . . .

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D)

32. CERCLA defines "person" to include, inter alia, "an individual, firm [or] corporation." 42 U.S.C. §9601(21).
33. Du Pont is within the class of persons described in Section 107(a)(2) of CERCLA.
34. EPEC Polymers, as successor in interest to Heyden Chemicals, at a minimum falls within the class of persons described in subsection (a)(2) of CERCLA Section 107.
35. GE, as successor in interest to Borg-Warner Specialty Chemicals, Inc., at a minimum, falls within the class of persons described in subsection (a)(2) of CERCLA Section 107.
36. Olin, as successor in interest to Mathieson Chemical Company and/or Olin-Mathieson Corp., at a minimum falls within the class of persons described in subsection (a)(2) of CERCLA Section 107.
37. Rockwell, as successor in interest to Rockwell Manufacturing Company and/or Sterling Faucet Company, at a minimum falls within the classes of persons described in subsections (a)(2) and (a)(3) of CERCLA Section 107.
38. The MOW Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
39. "Hazardous substances," within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), were disposed of at the MOW Site.
40. There have been "releases," within the meaning of Section 101(22) of CERCLA, 42

U.S.C. § 9601(22), or the threat of releases of hazardous substances into the environment at or from the MOW Site.

41. EPA has taken "response" actions at the MOW Site, within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), and has incurred, and continues to incur costs in connection with such response actions.

42. The costs incurred by the United States in connection with the MOW Site are not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 C.F.R. Part 300.

43. The unreimbursed response costs incurred by EPA in connection with the Site to date are at least \$3.6 million.

44. EPA will continue to incur response costs in connection with the Site.

45. The Defendants are jointly and severally liable to the United States for all unreimbursed response costs incurred, and to be incurred, by EPA in connection with the Site, including enforcement costs, and prejudgment interest on such costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, prays that this Court:

1. Enter judgment in favor of the United States and against the Defendants for all unreimbursed response costs incurred by EPA in connection with the MOW Site, and prejudgment interest on those costs;

2. Enter a declaratory judgment stating that the Defendants will be liable for all future response costs incurred by the EPA in connection with the MOW Site; and

3. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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